

Appl. No. : 10/614,643
Filed : July 7, 2003

REMARKS

Applicants have canceled Claims 118, 121, 123, 136-139, and 142-146 without prejudice to, or disclaimer of, the subject matter contained therein. Applicants maintain that the cancellation of a claim makes no admission as to its patentability and reserve the right to pursue the subject matter of the canceled claims in this or any other patent application. Applicants have amended Claim 117 to incorporate all limitations from allowed Claim 93 of U.S. Patent Application No. 10/614,644, and to remove the limitation “reintroducing said concentrated cell population that comprises adipose-derived stem cells into said patient” as discussed during the personal interview of January 8, 2008. Applicants have also amended Claims 124, 125, 127 and 140 and have added new Claims 147-149. The amendments and new claims add no new matter and are fully supported by the specification and claims as originally filed. Support for the amendments can be found, for example, at page 7, lines 27-28; page 10, lines 27-28; page 12, line 13; page 23, lines 4-8 and line 23; page 24, lines 1-7; page 26, lines 9-11; page 27, lines 11 and 16-20; page 28, lines 15-17; and page 29, lines 8-10, lines 15-18 and 25-26, and elsewhere throughout the specification and the claims as originally filed in the application. Upon entry of the foregoing amendments, Claims 117, 119-120, 122, 124-135, 140-141, and 147-149 are pending in the application and are presented for examination.

On January 8, 2008, the undersigned and Examiner Lankford conducted a personal interview to discuss the Restriction Requirement mailed October 11, 2007. During the interview, the restriction requirement, claim objections, and potential double patenting objections with respect to U.S. Patent Application Serial No. 10/614,644 were discussed. The undersigned and the Examiner agreed that Applicants would: (1) amend the claims to incorporate all limitations from allowed Claim 93 of U.S. Application No. 10/614,644; (2) amend the claims to remove the phrase “for reintroduction into a patient”; (3) amend the claims to remove references to specific ailments; (4) elect by amendment “unprocessed adipose tissue” as the additive for examination purposes; and (5) submit a terminal disclaimer to address any potential obviousness-type double patenting with respect to other applications in the family.

Response to Restriction Requirement

As discussed at the interview of January 8, 2008, Applicants’ amendments have removed the phrase “for reintroduction into a patient.” Therefore the election of species with respect to

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diseases or disorders to be treated has been obviated. The Examiner has also required an election of species with respect to the "additive" used in the method. Pursuant to linking claim practice, Applicants hereby elect for the purpose of examination "unprocessed adipose tissue" as the additive. Claims 117, 119, 120, 122, 124-135, 140, 141 and 147 read on the elected species.

Terminal Disclaimer

The undersigned and the Examiner discussed the possibility of obviousness-type double patenting at the personal interview on January 8, 2008. To alleviate any concerns regarding obviousness-type double patenting, Applicants hereby submit a terminal disclaimer that disclaims any terminal part of a patent that may grant on the instant application that would extend beyond the expiration dates of patents that issue to U.S. Patent Application No's: 10/614,644, 11/584,202, 10/614,431, and 10/614,392.

CONCLUSION

The undersigned has made a good faith effort to respond to the Restriction Requirement. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to call the undersigned attorney to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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